

AMENDED IN SENATE APRIL 25, 2001

**SENATE BILL**

**No. 773**

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**Introduced by Senator Speier**

February 23, 2001

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An act to add Division 1.2 (commencing with Section 4050) to the Financial Code, relating to financial privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 773, as amended, Speier. Financial institutions: confidential consumer information.

Existing law provides for the regulation of banks, savings associations, credit unions, and industrial loan companies by the Department of Financial Institutions and by certain federal agencies, as specified.

This bill would enact the Financial Information Privacy Act of 2002, which would require a financial institution to provide specified notice to, and to obtain the consent of, a customer before disclosing to or sharing confidential customer information, as defined, with any 3rd party, subject to certain exceptions. This bill would also require a financial institution, prior to using confidential customer information provided by certain 3rd parties, to take reasonable steps to ensure that the party providing the information had previously followed similar notice and consent procedures.

This bill would provide various civil and criminal remedies and penalties for *negligent, or knowing and willing* violations of these provisions. Because of the inclusion of criminal penalties, this bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Division 1.2 (commencing with Section 4050) is added to the Financial Code, to read:

DIVISION 1.2. FINANCIAL INFORMATION PRIVACY  
ACT

4050. This division shall be known and may be cited as the Financial Information Privacy Act of 2002.

4051. The Legislature intends for financial institutions to provide their customers notice and choice about how customers' personally identifiable sensitive financial information is shared or sold by their financial institutions.

4052. For the purposes of this division:

(a) "Confidential customer information" means personally identifiable data, including, but not limited to, names, addresses, telephone numbers, social security account numbers, driver's license numbers, account numbers, deposits, withdrawals, interest rates, fees and other charges, transactions, account balances, maturity dates, and payouts, with respect to the following:

- (1) Deposit and trust accounts.
- (2) Certificates of deposit.
- (3) Securities holdings.
- (4) Insurance policies.
- (5) Any other account maintained by a customer at a financial institution.

(b) "Financial institution" means a commercial bank, trust company, savings association, industrial loan company, or credit union doing business in this state.

4053. A financial institution shall not disclose to, or share a customer's confidential customer information with, any third party, including an affiliate or agent of that financial institution, or

1 a subsidiary, unless the financial institution has provided written  
2 notice to the customer to whom the confidential customer  
3 information relates and unless the financial institution has  
4 obtained a written or electronic consent acknowledgment from the  
5 customer that authorizes the financial institution to disclose or  
6 share the confidential customer information.

7 4054. (a) A financial institution that proposes to disclose or  
8 share a customer's confidential customer information shall  
9 provide a written notice to the customer that describes (1) the  
10 specific types of information that would be disclosed or shared, (2)  
11 the general circumstances under which the information would be  
12 disclosed or shared, (3) the specific types of persons or businesses  
13 that would receive the information, and (4) the specific proposed  
14 types of uses for the information.

15 (b) A financial institution shall provide notices and consent  
16 acknowledgments to customers as separate documents that are  
17 easily identifiable and distinguishable from other documents that  
18 otherwise may be provided to a customer.

19 (c) A customer shall have access to his or her confidential  
20 customer information that is proposed to be disclosed or shared in  
21 order to have an opportunity to review that information for  
22 accuracy, and to correct and supplement that information, if  
23 inaccurate.

24 4055. A financial institution that obtains confidential  
25 customer information about one of its customers from a third party  
26 that is engaged, directly or indirectly, in activities that are financial  
27 in nature, shall, prior to using that confidential customer  
28 information, take reasonable steps to ensure that the third party  
29 providing the information, or an affiliate or agent of that third  
30 party, has previously followed information privacy procedures  
31 that are substantially similar to the procedures contained in this  
32 division.

33 4056. (a) This division shall not apply to information that is  
34 not personally identifiable to a particular person.

35 (b) This division shall not prohibit the release of confidential  
36 customer information under any of the following circumstances:

37 (1) If the information is essential to processing a specific  
38 financial transaction that a customer has authorized.

39 (2) To a governmental or regulatory agency or to a  
40 self-regulatory entity, with jurisdiction over the financial

1 institution for examination, compliance, or other authorized  
2 purposes.

3 (3) To a court of competent jurisdiction.

4 (4) To a consumer reporting agency, as defined in Section 603  
5 of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a),  
6 for inclusion in a consumer report that may be released to a third  
7 party only for a purpose permissible under Section 604 of that act  
8 (15 U.S.C. Sec. 1681b).

9 (5) To a state or local agency for purposes of child support  
10 enforcement.

11 4057. (a) Any *negligent, or knowing and willful* violation of  
12 this division that results in an economic loss to a customer is  
13 punishable as a misdemeanor.

14 (b) In addition to any other remedies available at law, any  
15 customer may bring an action against any financial institution that  
16 negligently discloses or shares confidential customer information  
17 concerning him or her in violation of this division, for either or  
18 both of the following:

19 (1) Nominal damages of one thousand dollars (\$1,000). In  
20 order to recover under this paragraph, it shall not be necessary that  
21 the plaintiff suffered or was threatened with actual damages.

22 (2) The amount of actual damages, if any, sustained by the  
23 customer.

24 (c) (1) In addition, any financial institution that negligently  
25 discloses or shares confidential customer information in violation  
26 of this division shall be liable, irrespective of the amount of  
27 damages suffered by the customer as a result of that violation, for  
28 an administrative fine or civil penalty not to exceed two thousand  
29 five hundred dollars (\$2,500) per violation.

30 (2) (A) Any financial institution that knowingly and willfully  
31 obtains, discloses, or uses confidential customer information in  
32 violation of this division shall be liable for an administrative fine  
33 or civil penalty not to exceed twenty-five thousand dollars  
34 (\$25,000) per violation.

35 (B) Any financial institution that knowingly and willfully  
36 obtains, discloses, or uses confidential customer information in  
37 violation of this division shall be liable upon a first violation, for  
38 an administrative fine or civil penalty not to exceed two thousand  
39 five hundred dollars (\$2,500) per violation, or upon a second  
40 violation for an administrative fine or civil penalty not to exceed



1 ten thousand dollars (\$10,000) per violation, or upon a third or  
2 subsequent violation for an administrative fine or civil penalty not  
3 to exceed twenty-five thousand dollars (\$25,000) per violation.

4 ~~(3) (A) Any financial institution that knowingly or willfully~~  
5 ~~obtains or uses confidential customer information in violation of~~  
6 ~~this division for the purpose of financial gain shall be liable for an~~  
7 ~~administrative fine or civil penalty not to exceed two hundred fifty~~  
8 ~~thousand dollars (\$250,000) per violation and shall be subject to~~  
9 ~~disgorgement of any proceeds or other consideration obtained as~~  
10 ~~a result of the violation.~~

11 ~~(B)~~

12 (3) Any financial institution that knowingly and willfully  
13 obtains, discloses, or uses confidential customer information in  
14 violation of this division for financial gain shall be liable upon a  
15 first violation for an administrative fine or civil penalty not to  
16 exceed five thousand dollars (\$5,000) per violation, or upon a  
17 second violation for an administrative fine or civil penalty not to  
18 exceed twenty-five thousand dollars (\$25,000) per violation, or  
19 upon a third or subsequent violation for an administrative fine or  
20 civil penalty not to exceed two hundred fifty thousand dollars  
21 (\$250,000) per violation and shall be subject to disgorgement of  
22 any proceeds or other consideration obtained as a result of the  
23 violation.

24 (4) Nothing in this subdivision shall be construed as  
25 authorizing an administrative fine or civil penalty under both  
26 paragraphs (2) and (3) for the same violation.

27 4058. This division shall not be construed in a manner that is  
28 inconsistent with the federal Fair Credit Reporting Act (15 U.S.C.  
29 Sec. 1681 et seq.).

30 4059. *The provisions of this division shall be severable, and*  
31 *if any phrase, clause, sentence, or provision is declared to be*  
32 *invalid or is preempted by federal law or regulation, the validity*  
33 *of the remainder of this division shall not be affected thereby.*

34 SEC. 2. No reimbursement is required by this act pursuant to  
35 Section 6 of Article XIII B of the California Constitution because  
36 the only costs that may be incurred by a local agency or school  
37 district will be incurred because this act creates a new crime or  
38 infraction, eliminates a crime or infraction, or changes the penalty  
39 for a crime or infraction, within the meaning of Section 17556 of  
40 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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